

**To:** Fajardo, Juan[Fajardo.Juan@epa.gov]  
**From:** Larry Silver  
**Sent:** Wed 9/14/2016 1:53:34 AM  
**Subject:** Diamond Alkali Site -Settlement Confidential  
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Draft RD AOC August 2016 Oxy redlined edits 091316.pdf

**For Settlement Purposes Only**

**FRE 408 - Offer to Compromise**

**Confidential**

Juan,

Thanks much for arranging the meeting at Region 2 this past Friday, September 9. We appreciate the Region 2 Passaic team making itself available to us on short notice and the good progress made at the meeting.

As we discussed at the meeting, I am providing attached hereto a redlined ASAOC for the Remedial Design for OU-2 - the Lower 8.3 miles of the Passaic. This draft is redlined against EPA's version you sent to me on August 26, 2016. As to the major issues we discussed with you on September 8, I note the following:

a. Takeover Penalty – I have included a \$5 million dollar takeover penalty (down from \$25M) in paragraph 81 under “Stipulated Penalties” (Section XVI). We look forward to evaluating EPA's proposed language regarding an advanced payment on Future Response Costs associated with a Work Takeover under paragraph 91 of the ASAOC.

b. Federal PRP Carve-out – we have re-inserted the Federal PRP carve-out language into paragraph 92.d (under “XIX. Covenants by Settling Party”), using the identical language from several past Orders for this Site.

c. Sharing of Settlement Proceeds – we look forward to receiving EPA's additional language

addressing the sharing of proceeds from future settlements reached by EPA for OU-2.

d. Financial Assurance – we are evaluating EPA’s proposal on Friday that OCC provide financial assurance of \$82.5 million, composed of a corporate guarantee and liquid amount. We will get back to you by the end of this week with a response. We have not yet made any changes to the FA section of the ASAOC from the last draft.

e. Performance Standards/Dispute Resolution - Oxy respectfully requests that EPA reconsider its opposition to the applicability of Dispute Resolution to development of Performance Standards (PS). Oxy appreciates EPA’s offer to modify Section 1.4 of the SOW to provide assurance that the PS will be developed jointly by the parties, with EPA giving serious consideration to the opinions and suggestions of OCC, and that is language that Oxy would like to see included in the SOW regardless of the outcome of our discussions about PS being subject to Dispute Resolution. We fully recognize that EPA ultimately would be the final arbiter of the content of the PS (which is what the Dispute Resolution provision calls for in any event).

Proposed Statement of Work language (Section 1.4): “EPA will develop Performance Standards (PS) related to remedy implementation. EPA will collaborate on an ongoing basis with Settling Party throughout the PS development process, giving full consideration to the opinions and suggestions provided by Settling Party. The RD will be developed to achieve the PS. EPA will be the final arbiter with respect to the content of the PS, in conformance with the Dispute Resolution provisions of the ASAOC.”

Please be advised that we are providing these additional comments and edits to the Order subject to Oxy management review and approval and Oxy is reserving all rights in that regard.

Please note that there is one additional subject, raised in my July 15, 2016 email to you, that I neglected to follow-up on last week, which is of some importance to our technical staff: as noted in your letter to Benjamin Lippard dated June 27, 2016, the assistance EPA will provide the Settling Party in accomplishing the Congressional deauthorization of the navigation channel above RM 1.7.

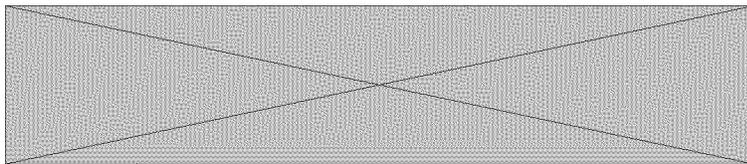
We look forward to further discussions with you on the Order and related Statement of Work.

Regards,

Larry

Larry Silver  
[lsilver@lssh-law.com](mailto:lsilver@lssh-law.com)

Direct: 215.239.9023



1818 Market Street, Suite 2610, Philadelphia, PA 19103-5319  
215-732-3255 | FAX: 215-732-3260

65 South Main Street, Suite B103, Pennington, NJ 08534  
856-727-0057 | FAX: 856-727-0315

[www.lssh-law.com](http://www.lssh-law.com)

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